BLACK HILLS
FEDERAL CREDIT UNION

A Member-Owned, Not-For-Profit Cooperative

PO Box 1420, Rapid City, SD 57709-1420

October 3, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Email: regcomments@ncua.gov

RE: Comments on Proposed Rule: Federal Credit Union Ownership of Fixed Assets

Dear Secretary Poliquin:

On behalf of the Board of Directors and Executive Management Team of Black Hills Federal Credit Union (BHFCU), I am writing in response to the NCUA's request for comment on the proposed rule regarding Federal Credit Union Ownership of Fixed Assets. Black Hills Federal Credit Union is a community chartered, low-income designated credit union serving members in the South Dakota counties of Pennington, Meade, Fall River, Custer, Lawrence, Haakon, Hughes, Stanley, and Butte. We also serve the Cheyenne River Indian Reservation in South Dakota, consisting of Dewey and Ziebach counties. BHFCU currently serves 59,782 members and has assets of approximately $1.01 billion. BHFCU has a net worth ratio of 10.98% and our fixed assets are $23.3 million, or 2.3% of assets.

We Strongly Recommend No Fixed Asset Rule for Well-Capitalized Credit Unions with Fixed Assets of 5% or Less

Boards of directors and management of well-capitalized credit unions with fixed assets of 5% or less should be allowed to manage their fixed assets without any applicable rules. With respect to BHFCU, the board of directors and management oversee a credit union with a $35 million operating budget, thus they can certainly determine what is best for the credit union regarding individual fixed assets that are immaterial to the bottom line. Therefore, if a credit union is well capitalized and fixed assets do not exceed 5%, there should be no fixed asset rule. There should be no requirements for partial or full occupancy, no waivers required to hold property, no timeframe limitations, and no Fixed Assets Management (FAM) Program. The NCUA should give boards of directors of well-run credit unions the ability to make their own determination of what is in the best interest of the members and the credit union.

The following is an example of how these blanket rules impact Black Hills FCU and other credit unions that own property that has no material impact on their financial standing. On December 16, 2005, BHFCU purchased a 1.42 acre parcel for the sum of $262,884 with the intent to hold the land until significant commercial development and infrastructure occurred. Attempts by developers to locate a Wal-Mart and other shopping developments near this location were met with challenges; this, along with the current economic environment, has limited additional attempts of other commercial development in this area. To date, there is no infrastructure in place that would allow BHFCU to affordably develop the parcel.

Even though this property accounts for just .026% of BHFCU's total assets of $1.01 billion, we are currently required to petition NCUA every year for approval to hold this property until development is economically feasible.

This is one example of the NCUA managing an asset that does not have a material impact to the balance sheet. The rule should allow boards of directors of well-capitalized credit unions to manage their credit union in a manner that provides focus where it should be – serving the members who elected them.

FOLLOWING ARE OUR COMMENTS SPECIFIC TO THE PROPOSED RULE

Removal of 5% Cap and the Implementation of a Fixed Asset Management Program

We do understand the overall goal of the Fixed Assets Proposal (FAM) is to reduce regulatory burden while protecting the system. We support the FAM proposal **only if our recommendation stated above is approved.** Otherwise, we believe much more damage than good will be done. We fear that if a FAM program is put in place for those credit unions with fixed assets exceeding 5% of assets, NCUA will eventually consider this as a best practice and will expect their field examiners to impose this unnecessary burden on all credit unions, including those that are well managed and maintain fixed assets below 5%.

Partial Occupancy Requirements

Some aspects of this proposed change are an improvement, but they do not address existing complications of the rule. The 2013 Partial Occupancy Requirements rule change stated, "The proposed amendments did not make any substantive changes to the regulatory requirements." In fact, we believe the changes were very significant and to the detriment of credit unions. These changes completely altered the prior interpretation of the requirements regarding partial occupancy and partial full-time use.

In 2013, the definition of partially occupy was changed from "premises are partially-occupied when the credit union is using some part of the space on a full-time basis" to "Partially occupy means occupation, on a full-time basis, of a portion of the premises that is: (1) consistent with the federal credit unions usage plan for the premises: (2) significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan: and (3) sufficient to show that the federal credit union will fully occupy the premise within a reasonable time."

This rule change impacted BHFCU's plan to deploy ATM services to unoccupied properties that we have purchased for future expansion. The 2013 rule change does not allow us to simply place an ATM on these properties, and still meet the requirements of the second condition which states: "significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan." The deployment of additional member services on otherwise vacant land would have no long-term negative impact to the credit union and only positive benefits to our members. The rule change has denied additional services to our members in the communities we serve. BHFCU would welcome a change in the partial occupation language back to the previous interpretation of partial full-time use - "premises are partially-occupied when the credit union is using some part of the space on a full-time basis." This definition is very simple and clear and leaves no question to whether the credit union is meeting the requirement or not.

Timeframe for Full Occupation

The NCUA is requesting comment regarding what a reasonable timeframe is for a credit union to achieve full occupation of a property. This is another area where the NCUA should allow flexibility to the boards of directors and management of the credit union to determine the best timeframe to fully develop a property. A credit union should not feel pressured to deploy a facility prematurely just to satisfy a specific time period requirement. Credit unions should make branching decisions based upon current and future economic outlooks and the projected performance of a future facility, not an arbitrary timeframe set for all credit unions and all circumstances. At a minimum, the timeframe should be six years for all property and a simple extension process beyond the six years.

Developed and Undeveloped Property

We welcome eliminating the two separate classification time frames regarding developed and undeveloped and combining them into one single-time period to hold property for development. However, in some cases, five years is a relatively short period of time to hold unimproved land until it can be developed by a credit union.

The example we gave previously shows why the rule should not be a blanket rule. We have petitioned for, and have been granted, two extensions to continue to hold this undeveloped property. The last extension was only granted for one year. These short extensions do little to reduce the regulatory burden on a credit union and only increases paperwork for the credit union, the NCUA and the Regional Director.

BHFCU's growth philosophy and strategy has been to buy expansion properties with the intent to hold them for a period of three to six years, or until future, significant development and growth warrant the construction of a new facility. This practice has allowed the credit union to purchase properties in strategic locations at a reasonable cost. Purchase of these properties would not be economically feasible if we were to wait until projected growth occurs. We would prefer that the NCUA provide a longer term to hold land rather than shortening the time frame. At a minimum, the term should be the six years previously provided for in the regulations. This will allow us to continue to make responsible investments for future growth without being overly burdensome.

Full Occupancy of Premises Acquired for Future Expansion

We support the proposal to eliminate the 30-month requirement for partial occupancy waiver requests. This is a good, common-sense approach that allows credit union boards of directors and management some flexibility when determining future facility needs. The current rule does not allow credit unions to plan far enough in advance without using the waiver process. We support the removal of the 30-month notice to the proposed changes.

Summary

Boards of directors and management of well-capitalized credit unions with fixed assets of 5% or less should be allowed to manage their fixed assets without any applicable fixed asset rule. There should be no requirements for partial or full occupancy, no waivers required to hold property, no timeframe limitations, and no FAM Program. The NCUA should give boards of directors of well-capitalized credit unions the ability to make their own determination as to what is in the best interest of the members and the credit union.

We also support the elimination of the 5% fixed assets cap and the establishment of the FAM program, but only if our recommendation to eliminate all fixed asset rules for well-capitalized credit unions with less than 5% in fixed assets is adopted. As stated previously, we fear the possibility of field examiners expecting to see a FAM Program from all credit unions, not just those above 5% in fixed assets.

The reduction in time frame to hold undeveloped property is a negative for credit unions. Without the ability to manage our own growth within our specific markets, credit unions will be forced to wait until significant development has occurred and pay retail prices for property. In the end, this increases costs for credit unions and compounds the issue by adding to total dollars in fixed assets.

We recommend changing the partial occupation requirements back to the rule in place prior to the 2013 changes. Specifically, the previous rule stated "premises are partially-occupied when the credit union is using some part of the space on a full-time basis." The rule was clear and offered the flexibility to credit unions to use properties in the manner that best benefited the credit union and its members.

We support the elimination of the 30-month requirement for partial occupancy waiver requests.

We thank you for the opportunity to comment and for your time and consideration. We strongly encourage you to adopt our recommendation that there be no fixed asset rule for well-capitalized credit unions with fixed assets of 5% or less.

Respectfully,

Roger R. Heacock
President & CEO

cc: Credit Union National Association (CUNA)
Credit Union Association of the Dakotas (CUAD)